

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

JAMES S. AKERS,

Plaintiff,

v.

CIVIL ACTION NO. 1:04-1247

JO ANNE B. BARNHART,
Commissioner of the Social
Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered on July 21, 2004, and filed in this case on November 23, 2004, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendation. Magistrate Judge VanDervort submitted his proposed findings and recommendation on February 23, 2006. In that Proposed Findings and Recommendation, the magistrate judge recommended that this court (1) grant plaintiff's motion for summary judgment (Doc. No. 8), (2) deny defendant's motion for judgment on the pleadings (Doc. No. 10), and (3) vacate the final decision of the Commissioner, (4) remand this matter to defendant for further proceedings consistent with the district court's decision, and (5) dismiss this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings


and Recommendation. No party has filed objections within the requisite period, and the failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Thomas v. Arn, 474 U.S. 140 (1985); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Having reviewed the Proposed Findings and Recommendation filed by the magistrate judge, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby (1) **GRANTS** plaintiff's motion for summary judgment, (2) **DENIES** defendant's motion for judgment on the pleadings, (3) **VACATES** the decision of the Commissioner, (4) **REMANDS** this matter to the defendant for further proceedings consistent with this decision, and (5) **DIRECTS** the clerk to remove this matter from the court's active docket.

The Clerk is directed to forward a certified copy of this Memorandum Opinion and Order to all counsel of record and to Magistrate Judge VanDervort.

IT IS SO ORDERED this 15th day of March, 2006.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge